

HOUSE BILL 1383

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 9, Chapter 4, Part 2; Title 24, Chapter 7, Part 1; Title 37, Chapter 1 and Title 40, Chapter 17, relative to child sexual abuse.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-1-607, is amended by deleting the section in its entirety and substituting instead the following:

§ 37-1-607.

(a)

(1) The department shall coordinate the services of child protective teams. At least one (1) child protective team shall be organized in each county. The district attorney general of each judicial district shall, by January 15 of each year, report to the judiciary committees of the senate and house of representatives, the children and family affairs committee of the house of representatives, and the select committee on children and youth on the status of the teams in the district attorney general's district as required by this section, the progress of the child protective teams that have been organized in the district attorney general's district, along with any recommendations for enhancement of the child sexual abuse plan and program. The department shall, with the cooperation of all statutorily authorized members of the child protective team, establish a procedure and format for data collection. The report shall include at a minimum the following information:

(A) The number of reports received for investigation by type, including, but not limited to, sexual abuse, serious physical abuse, life-threatening neglect;

(B) The number of investigations initiated by type;

(C) The number of final dispositions of cases obtained in the current reporting year by type of disposition as follows:

(i) Unsubstantiated, closed, no service;

(ii) Unsubstantiated, referred for non-custodial support services;

(iii) Substantiated, closed, no service;

(iv) Substantiated, service provided, no prosecution;

(v) Substantiated, service provided, prosecution, acquittal; or

(vi) Substantiated, service provided, prosecution, conviction.

(D) Age, race, gender, and relationship to the victim of perpetrators identified in cases that are included in (a)(1)(C)(iii)-(vi); and

(E) The type and amount of community-based support received by child protective teams through linkages with other local agencies and organizations and through monetary or in-kind, or both, donations.

(2) In addition to the information provided in subdivision (a)(1) of this section, in each judicial district where there is a child advocacy

center, the district attorney general shall also provide a report that shall include at a minimum the following information:

(A) The number of forensic interviewers working for child advocacy centers in Tennessee by county and judicial district and the need, if any, for additional resources to fund forensic interviewing in the state of Tennessee;

(B) The number of child advocacy centers in each judicial district and the number of child sexual abuse investigations handled by each child advocacy center; and

(C) The obstacles, if any, to interviewing children who are sexually abused and any recommendations to improve the interviewing process.

(3)

(A) Each team shall be composed of:

(i) One (1) person from the department;

(ii) One (1) representative from the office of the district attorney general;

(iii) One (1) juvenile court officer or investigator from a court of competent jurisdiction; and

(iv) One (1) properly trained law enforcement officer with countywide jurisdiction from the county where the child resides or where the alleged offense occurred.

(B) In addition to the representation requirements of the team set out in subdivision (a)(3)(A):

(i) In each judicial district where there is a child advocacy center that meets the requirements of § 9-4-213(a) or (b), a child advocacy center director, or a director's designee, shall also be a member of the team organized pursuant to this part for the purposes of provision of services and functions established by § 9-4-213 or delegated pursuant to that section.

(ii) In geographical areas where there is a child advocacy center that meets the requirements of § 9-4-213(a) or (b), a child advocacy center director, or a director's designee, shall also be a member of the team organized pursuant to part 4 of this chapter for the purposes of provision of services and functions established by § 9-4-213 or delegated pursuant to that section.

(C) If the team has a representative from a child advocacy center pursuant to subdivision (a)(3)(B) of this section, the child advocacy center director, or the director's designee, may access and generate all necessary information, which shall retain its confidential status, consistent with § 37-1-409 or § 37-1-612.

(D) The team may also include a representative from one (1) of the mental health disciplines.

(E) It is in the best interest of the child that, whenever possible, an initial investigation shall not be commenced unless all five (5) disciplines set out in subdivision (a)(1) of this section are represented. An initial investigation may, however, be commenced

if at least two (2) of the team members are present at the initial investigation, provided that one of the two (2) members is a properly trained law enforcement officer with countywide jurisdiction from the county where the child resides or where the alleged offense occurred.

(4) Whenever possible, child protective investigations shall be conducted by the team members in a manner that not only protects the child but that also preserves any evidence for future criminal prosecutions. It is essential, therefore, that all phases of the child protective investigation be appropriately conducted and that further investigations, as appropriate, be properly conducted and coordinated.

(b)

(1) The department shall convene the appropriate team when a report of child sexual abuse has been received. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report all suspected or actual cases of child sexual abuse. The role of the teams shall be to conduct child protective investigations of reported child sexual abuse and to support and provide services to sexually abused children upon referral as deemed by the teams to be necessary and appropriate for such children.

(2)

(A) For each child sexual abuse report it receives, the department shall immediately notify the child protection investigation team, which shall commence an on-site child protective investigation. The team shall:

(i) Determine the composition of the family or household, including the name, address, age, sex and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents or other persons responsible for the child's welfare; and any other adults in the same household;

(ii) Determine whether there is any indication that any child in the family or household is sexually abused, including a determination of harm or threatened harm to each child; the nature and extent of present or prior injuries, or abuse, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse;

(iii) Determine the immediate and long-term risk to each child if the child remains in the existing home environment; and

(iv) Determine the protective, treatment and ameliorative services necessary to safeguard and ensure the child's well-being and development and, if possible, to preserve and stabilize family life.

(B) Whenever possible, the team shall seek to interview the child in a neutral setting, other than where the alleged abuse occurred.

(C) If the team has a representative from a child advocacy center pursuant to subdivision (a)(3)(B) of this section, a forensic interviewer working for the child advocacy center shall interview the child to recommend whether the child has been sexually abused and determine the treatment and services that are necessary to ensure the child's well-being. In no case may the department find that a case is unsubstantiated when the forensic interviewer who has interviewed the child determines that the child has been sexually abused. If the forensic interviewer believes that the child has been sexually abused and the team is not in agreement with such a finding, the department shall proceed as if the sexual abuse allegations are substantiated and provide protective services, as well as treatment, to the child.

(3)

(A) Immediately upon receipt of a report alleging, or immediately upon learning during the course of an investigation, that child sexual abuse has occurred or an observable injury or medically diagnosed internal injury occurred as a result of the sexual abuse, the department shall orally notify the team, the appropriate district attorney general and the appropriate law enforcement agency whose criminal investigations shall be coordinated, whenever possible, with the child protective team investigation.

(B) In all cases, the team and the department shall make a full written report to the district attorney general within three (3)

days of the oral report. If, as a result of an investigation, there is cause to believe a violation of title 39, chapter 17, part 10 has occurred, an appropriate report shall be filed by the district attorney general requesting an investigation by the Tennessee bureau of investigation. If independent criminal investigations are made, interviews with the victimized child shall be kept to an absolute minimum and, whenever possible, reference to the videotape or tapes made by the child protective teams should be utilized.

(4) In addition to the requirements of this part, the provisions of § 37-1-406 shall apply to any investigation conducted pursuant to this section.

(5) As a result of its investigation, the team may recommend that criminal charges be filed against the alleged offender. Any interested person who has information regarding the offenses described in this subsection (b) may forward a statement to the district attorney general as to whether prosecution is warranted and appropriate. Within fifteen (15) days of the completion of the district attorney general's investigation, the district attorney general shall advise the department and the team whether or not prosecution is justified and appropriate in the district attorney general's opinion in view of the circumstances of the specific case.

(c)

(1) The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that the team shall be capable of



providing, to the extent funds are specifically appropriated therefor, or by referral shall be capable of obtaining for the protection of the child, include, but are not limited to, the following:

(A) Telephone consultation services in emergencies and in other situations;

(B) Medical evaluation related to the sexual abuse;

(C) Such psychological and psychiatric diagnosis and evaluation services for the child, siblings, parent or parents, guardian or guardians, or other care givers, or any other individual involved in a child sexual abuse case, as a child protection team may determine to be needed;

(D) Short-term psychological treatment. The department shall provide or refer a child whose case has been validated by the department, and the child's family, for short-term psychological treatment before the department may close its case. Such short-term treatment shall be limited to no more than six (6) months' duration after treatment is initiated, except that the commissioner may authorize such treatment for individual children beyond this limitation if the commissioner deems it appropriate;

(E) Expert medical, psychological and related professional testimony in court cases;

(F) Case staffings to develop, implement and monitor treatment plans for a child whose case has been validated by the department. In all such case staffings, consultations, or staff activities involving a child, at least one (1) member of the team involved in the initial investigation shall

continue to monitor the progress and status of the child whenever possible and within the same geographic area; and

(G) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.

(2) In all instances where a child protection team is providing or has obtained by referral certain services to sexually abused children, other offices and units of the department shall avoid duplicating the provision of those services.

(d) For purposes of this section, “forensic interviewer” means a person who has:

(1) Obtained a relevant educational or experiential background, preferably a college degree, or work experience in a field related to sociology, social work, education, criminal justice, nursing, psychology, counseling, or a similarly applied human services specialty;

(2) Completed a minimum of twenty-five (25) hours of clinical training in interviewing traumatized children;

(3) Completed a minimum of eight (8) hours of interviewing under the supervision of a qualified forensic interviewer of children;

(4) Demonstrated knowledge of investigations of child sexual abuse, as well as knowledge of child development through coursework, professional training or experience; and

(5) Maintained membership in appropriate national professional organizations that report research findings and offer opportunities for other continuing education for the enhancement of its members' knowledge and specialization.

SECTION 2. Tennessee Code Annotated, Section 37-1-406(e), is amended by deleting the subsection in its entirety and substituting instead the following:

(e)

(1) The investigation shall include a visit to the child's home, an interview with and physical observation of the child, and an interview with the parent(s) or other custodian(s) of the child and any other persons in the child's home. If the investigator deems it necessary, the investigation shall also include medical, psychological or psychiatric examinations of the child and any other children in the child's home or under the care of any person alleged to have permitted or caused abuse, neglect or sexual abuse to the child.

(2)

(A) If the investigator determines, based on a visit to the child's home, observation of and interview with the subject child, and interview with other persons in the child's home, that the report of harm was wholly without substance, the investigator may determine that physical and psychological examinations of the subject child are unnecessary, in which case they will not be required.

(B) Notwithstanding the provisions of this subdivision (e)(2)(A), cases involving child sexual abuse, if the investigative team has a representative from a child advocacy center pursuant to § 37-1-607(a)(3)(B), a forensic interviewer, as defined by § 37-1-607(d), working for the child advocacy center, shall interview the child prior to the team making a determination that the report of harm is wholly without substance. If the forensic interviewer believes that the child has been sexually abused and the team is not in agreement with such a finding, the

department shall proceed with providing protective services, including treatment, to the child.

(C) If admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained, the juvenile court, upon cause shown, shall order the parents or person responsible for the care of the child or the person in charge of any place where the child may be, to allow entrance for the interview, examination, and investigation. If the report of harm indicates that the abuse, neglect or sexual abuse occurred in a place other than the child's home, then, in the discretion of the investigator, the investigation may include a visit to the location where the incident occurred or a personal interview with the child and the parents or other custodians in another location instead of a visit to the child's home.

SECTION 3. This act shall take effect July 1, 2009, the public welfare requiring it.